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COSTCO WHOLESALE CORPORATION

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JOSEF LOUIS BOOTOW,
Plaintiffs,
vs.
COSTCO WHOLESALE
CORPORATION; BRUCE FINN;
DOES 1 to 20,
Defendants.

Case No.:

**NOTICE OF REMOVAL OF
ACTION UNDER 28 U.S.C. § 1441(b)
(DIVERSITY)**

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE THAT Defendant, Costco Wholesale Corporation (“Defendant”) hereby removes this action from the Superior Court of the State of California, County of Orange, to the United States District Court for the Central District of California pursuant to 28 U.S.C. §§ 1332, 1441 and 1446 and sets forth in support of its Notice of Removal of Action the following:

Complete Diversity Exists

1. This Notice of Removal is based in part, upon 28 U.S.C. § 1441(a) that states: “any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the



1 defendants, to the district court of the United States for the district and division
2 embracing the place where such action is pending.”

3 2. District courts have original have original jurisdiction of all civil
4 actions where the matter in controversy exceeds the sum or value of \$75,000,
5 exclusive of interest and costs, and is between citizens of different States. 28 U.S.C.
6 § 1332(a)(1).

7 3. Plaintiff, Josef Louis Bootow is a citizen of the state of California.

8 4. Defendant, Costco Wholesale Corporation was, at the time of the filing
9 of this action, and still is, a citizen of the state of Washington. Defendant is a
10 California corporation with its headquarters and principal place of business in
11 Washington.

12 5. Defendant, Bruce Finn has not been served or appeared in this action.
13 Those named as defendants but not yet served in the state court action need not join
14 the notice of removal. Northern Ill. Gas Co. v. Airco Industrial Gases (7th Cir.
15 1982) 676 F2d 270, 272; Destfino v. Reiswig (9th Cir. 2011) 630 F3d 952, 955
16 (codefendants not properly served need not join).

17 6. Thus, a defendant who has been served or who has otherwise acquired
18 notice of a state court action need not seek out and notify codefendants who have
19 not yet been served to ask them to join in the removal. See Gossmeier v. McDonald
20 (7th Cir. 1997) 128 F3d 481, 489.

21 7. Moreover, defendant, Bruce Finn appears to have been named to create
22 a fraudulent joinder. Joinder in the notice of removal is not required by persons
23 named as defendants solely to prevent removal. Chambers v. HSBC Bank USA,
24 N.A. (6th Cir. 2015) 796 F3d 560, 564-565; Farias v. Bexar County Bd. of Trustees
25 for Mental Health Mental Retardation Services (5th Cir. 1991) 925 F2d 866, 871.

26 8. Therefore, diversity of citizenship exists for purposes of removal of the
27 state court action to this district court.

28 ///



Amount in Controversy Exceeds \$75,000

9. Plaintiff's Complaint alleges two causes of action for negligence and premises liability against Defendant. (*See* Plaintiff's Complaint, Case No. 30-2021-01228600-CU-PO-CJC, Superior Court of California, County of Orange, pages 3, attached as Exhibit A.)

10. On July 11, 2020, Plaintiff alleges that he slipped and fell while visiting Defendant's store located at 22633 Savi Ranch Parkway, Yorba Linda, California and sustained personal injuries. Plaintiff alleges Defendant was negligent since the dangerous condition was known, or in the exercise of ordinary and reasonable care would have been known to Defendant in adequate time for a reasonably prudent person to warn of, prevent, and/or make safe the condition, which caused Plaintiff to suffer injury. (*See* Plaintiff's Complaint, Case No. 30-2021-01228600-CU-PO-CJC, Superior Court of California, County of Orange, pages 3, attached as Exhibit A.)

11. Plaintiff alleges he has suffered general damages, medical and incidental expenses, other special and incidental damages, loss of earnings, and loss of earning capacity. (*See* Plaintiffs' Complaint, Case No. 30-2021-01228600-CU-PO-CJC, Superior Court of California, County of Orange, pages 3, attached as Exhibit A.)

12. On March 10, 2022, Plaintiff served Defendant with a Statement of Damages explaining he sustained medical specials (to date) in the amount of \$250,000.00, future medical specials in the anticipated amount of \$500,000.00, and general damages in the amount of \$3,000,000.00. (*See* Plaintiff's Statement of Damages, attached as Exhibit B.)

13. Therefore, Plaintiff alleges damages that far exceed the minimum amount in controversy requirements for purposes of removal of the state court action to this district court.

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Notice of Removal Is Timely

14. On October 28, 2021, Plaintiff filed this action in the Superior Court of the State of California, County of Orange, as case no. 30-2021-01228600-CU-PO-CJC. (See Plaintiff's Complaint attached hereto as Exhibit A.)

15. On March 10, 2022, Plaintiff served the Summons and Complaint on Defendant through its registered agent, C T Corporation System.

16. This Notice of Removal is being filed within thirty (30) days after Defendant received Plaintiff's initial pleading. 28 U.S.C. § 1446(b).

Other Requirements for Removal Are Met

17. Removal of this lawsuit to the United States District Court for the Central District of California, Southern Division is proper as the Superior Court of the State of California, County of Orange, where the action was originally filed, is located in this district.

18. Defendant is simultaneously filing a Notice of Removal to Federal Court with the Superior Court of the State of California, County of Orange, and it has given notice and served this pleading on Plaintiff. (A true and correct copy of the Notice of Removal to Federal Court filed with the Superior Court is attached hereto as Exhibit C.)

Demand for Jury Trial

19. Separate and apart from removal requirements, counsel for Defendant demands a jury trial.

Dated: March 29, 2022

COLMAN PERKINS LAW GROUP

A handwritten signature in blue ink, appearing to read "Jonathan H. Colman", is written over a horizontal line.

BY: _____

JONATHAN H. COLMAN

JOHN K. FLOCK

LAUREN B. KUTZ

Attorneys for Defendants

COSTCO WHOLESALE CORPORATION

EXHIBIT A

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Gene J. Goldsman, Esq. SBN: 76554 Law Offices of Gene J. Goldsman 501 Civic Center Drive West Santa Ana, CA 92701 TELEPHONE NO: (714) 541-3333 FAX NO. (Optional): (714) 541-0456 E-MAIL ADDRESS (Optional): ESERVICE@GJGLAW.COM ATTORNEY FOR (Name): Josef Louis Bootow		FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE STREET ADDRESS: 700 Civic Center Drive West MAILING ADDRESS: 700 Civic Center Drive West CITY AND ZIP CODE: Santa Ana, 92701 BRANCH NAME: Central Justice Center		
PLAINTIFF: Josef Louis Bootow DEFENDANT: Costco Wholesale Corporation; Bruce Finn <input checked="" type="checkbox"/> DOES 1 TO 20		
COMPLAINT—Personal Injury, Property Damage, Wrongful Death <input type="checkbox"/> AMENDED (Number): Type (check all that apply): <input type="checkbox"/> MOTOR VEHICLE <input checked="" type="checkbox"/> OTHER (specify): Negligence; Premises Liability <input checked="" type="checkbox"/> Property Damage <input type="checkbox"/> Wrongful Death <input checked="" type="checkbox"/> Personal Injury <input type="checkbox"/> Other Damages (specify):		
Jurisdiction (check all that apply): <input type="checkbox"/> ACTION IS A LIMITED CIVIL CASE Amount demanded <input type="checkbox"/> does not exceed \$10,000 <input type="checkbox"/> exceeds \$10,000, but does not exceed \$25,000 <input checked="" type="checkbox"/> ACTION IS AN UNLIMITED CIVIL CASE (exceeds \$25,000) <input type="checkbox"/> ACTION IS RECLASSIFIED by this amended complaint <input type="checkbox"/> from limited to unlimited <input type="checkbox"/> from unlimited to limited		CASE NUMBER: 30-2021-01228600-CU-PO-CJC Assigned for All Purposes Judge Lon F. Hurwitz

1. Plaintiff (name or names): Josef Louis Bootow
alleges causes of action against defendant (name or names): Costco Wholesale Corporation; Bruce Finn; DOES 1 to 20

2. This pleading, including attachments and exhibits, consists of the following number of pages: 7

3. Each plaintiff named above is a competent adult

- a. ☐ except plaintiff (name):
- (1) ☐ a corporation qualified to do business in California
 - (2) ☐ an unincorporated entity (describe):
 - (3) ☐ a public entity (describe):
 - (4) ☐ a minor ☐ an adult
 - (a) ☐ for whom a guardian or conservator of the estate or a guardian ad litem has been appointed
 - (b) ☐ other (specify):
 - (5) ☐ other (specify):
- b. ☐ except plaintiff (name):
- (1) ☐ a corporation qualified to do business in California
 - (2) ☐ an unincorporated entity (describe):
 - (3) ☐ a public entity (describe):
 - (4) ☐ a minor ☐ an adult
 - (a) ☐ for whom a guardian or conservator of the estate or a guardian ad litem has been appointed
 - (b) ☐ other (specify):
 - (5) ☐ other (specify):

☐ Information about additional plaintiffs who are not competent adults is shown in Attachment 3.

SHORT TITLE: Bootow v. Costco Wholesale Corporation, et al.

CASE NUMBER:

4. ☐ Plaintiff (name):

is doing business under the fictitious name (specify):

and has complied with the fictitious business name laws.

5. Each defendant named above is a natural person

a. ☒ except defendant (name): Costco Wholesale Corporation(1) ☐ a business organization, form unknown(2) ☒ a corporation(3) ☐ an unincorporated entity (describe):(4) ☐ a public entity (describe):(5) ☐ other (specify):c. ☐ except defendant (name):(1) ☐ a business organization, form unknown(2) ☐ a corporation(3) ☐ an unincorporated entity (describe):(4) ☐ a public entity (describe):(5) ☐ other (specify):b. ☐ except defendant (name):(1) ☐ a business organization, form unknown(2) ☐ a corporation(3) ☐ an unincorporated entity (describe):(4) ☐ a public entity (describe):(5) ☐ other (specify):d. ☐ except defendant (name):(1) ☐ a business organization, form unknown(2) ☐ a corporation(3) ☐ an unincorporated entity (describe):(4) ☐ a public entity (describe):(5) ☐ other (specify):☐ Information about additional defendants who are not natural persons is contained in Attachment 5.

6. The true names of defendants sued as Does are unknown to plaintiff.

a. ☒ Doe defendants (specify Doe numbers): 1 to 20 were the agents or employees of other named defendants and acted within the scope of that agency or employment.b. ☒ Doe defendants (specify Doe numbers): 1 to 20 are persons whose capacities are unknown to plaintiff.7. ☐ Defendants who are joined under Code of Civil Procedure section 382 are (names):

8. This court is the proper court because

a. ☐ at least one defendant now resides in its jurisdictional area.b. ☐ the principal place of business of a defendant corporation or unincorporated association is in its jurisdictional area.c. ☒ injury to person or damage to personal property occurred in its jurisdictional area.d. ☐ other (specify):9. ☐ Plaintiff is required to comply with a claims statute, anda. ☐ has complied with applicable claims statutes, orb. ☐ is excused from complying because (specify):

SHORT TITLE: Bootow v. Costco Wholesale Corporation, et al.	CASE NUMBER:
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10. The following causes of action are attached and the statements above apply to each (*each complaint must have one or more causes of action attached*):

- a. ☐ Motor Vehicle
- b. ☒ General Negligence
- c. ☐ Intentional Tort
- d. ☐ Products Liability
- e. ☒ Premises Liability
- f. ☐ Other (*specify*):

11. Plaintiff has suffered

- a. ☒ wage loss
- b. ☒ loss of use of property
- c. ☒ hospital and medical expenses
- d. ☒ general damage
- e. ☒ property damage
- f. ☒ loss of earning capacity
- g. ☒ other damage (*specify*): Costs of transportation to and from all medical providers; costs of suit; pre and post judgment interest; any such further relief as the Court deems just and proper.

12. ☐ The damages claimed for wrongful death and the relationships of plaintiff to the deceased are

- a. ☐ listed in Attachment 12.
- b. ☐ as follows:

13. The relief sought in this complaint is within the jurisdiction of this court.

14. Plaintiff prays for judgment for costs of suit; for such relief as is fair, just, and equitable; and for

- a. (1) ☒ compensatory damages
- (2) ☐ punitive damages

The amount of damages is (*in cases for personal injury or wrongful death, you must check (1)*):

- (1) ☒ according to proof
- (2) ☐ in the amount of: \$

15. ☒ The paragraphs of this complaint alleged on information and belief are as follows (*specify paragraph numbers*): All Paragraphs

Date: October 28, 2021

Gene J. Goldsman, Esq.

(TYPE OR PRINT NAME)

(SIGNATURE OF PLAINTIFF OR ATTORNEY)

EXHIBIT B

American LegalNet, Inc.
www.FormsWorkflow.com

EXHIBIT C



1 JONATHAN H. COLMAN (SBN 93652)
JOHN K. FLOCK (SBN 200183)
2 LAUREN B. KUTZ (SBN 250718)
COLMAN PERKINS LAW GROUP
3 500 North Brand Boulevard, Suite 2200
Glendale, California 91203
4 TELEPHONE (818)546-8686
FACSIMILE (818)546-8787
5 Attorneys for Defendants
COSTCO WHOLESALE CORPORATION
6
7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF ORANGE - (SANTA ANA)**

10
11 JOSEF LOUIS BOOTOW,
12 Plaintiffs,
13 vs.
14 COSTCO WHOLESALE CORPORATION;
BRUCE FINN; DOES 1 to 20,
15 Defendants.
16

Case No.: 30-2021-01228600-CIJ-PO-CJC

**NOTICE OF REMOVAL
TO FEDERAL COURT**

17
18 TO PLAINTIFF JOSEF LOUS BOOTOW AND HIS ATTORNEYS OF RECORD:
19 PLEASE TAKE NOTICE THAT Defendant, Costco Wholesale Corporation
20 (“Defendant”) has filed a Notice of Removal of this action in the United States District Court for
21 the Central District of California, Southern Division, pursuant to 28 U.S.C. § 1332, 1334, 1441,
22 1446, and 1452, and as otherwise provided by law.

23 A true and correct copy of said Notice of Removal is attached to this notice and
24 incorporated herein by this reference as Exhibit “A”, and is served and filed herewith.

25 ///

26 ///

27 ///

1 Dated: March 29, 2022

COLMAN PERKINS LAW GROUP

3 

5 BY: _____

JONATHAN H. COLMAN

JOHN K. FLOCK

LAUREN B. KUTZ

Attorneys for Defendants

COSTCO WHOLESALE CORPORATION



Re: Bootow v. Costco Wholesale Corporation
Case No.: 30-2021-01228600-CIJ-PO-CJC

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California; I am over the age of eighteen years and am not a party to this action; my business address is Colman Perkins Law Group, 15615 Alton Parkway, Suite 370, Irvine, California 92618, in said County and State.

On March 30, 2022, I served the foregoing document described as

NOTICE OF REMOVAL TO FEDERAL COURT

on the interested parties in this action as follows:

PLEASE SEE ATTACHED SERVICE LIST

// **BY MAIL (C.C.P. §§ 1013(a)):** By placing the document listed above in a sealed envelope addressed to the parties set forth on the attached Service List. I am “readily familiar” with the firm’s practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the United States Postal Service on that same day with postage thereon fully prepaid at Irvine, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

/X/ **ONLY BY ELECTRONIC TRANSMISSION:** Only by e-mailing the document(s) from [cjacobson@colmanlawgroup.com](mailto:cjacobsen@colmanlawgroup.com) to the person(s) at the e-mail address(es) listed on the attached Service List. This is necessitated during the declared National Emergency due to the Coronavirus (Covid-19) pandemic because this office will not be sending physical mail as usual, and therefore will be using only electronic mail. No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission. We will provide a physical copy upon request only.

/X/ **(STATE)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct. **(C.C.P. § 2015.5)**

// **(FEDERAL)** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on March 30, 2022, at Irvine, California.

Candice VanDeudekom



SERVICE LIST

Re: Bootow v. Costco Wholesale Corporation
Case No.: 30-2021-01228600-CIJ-PO-CJC

Gene J. Goldsman, Esq.
The Law Offices of Gene J. Goldsman
501 Civic Center Drive
Santa Ana, CA 92701
(714)541-3333 Phone
(714)541-0456 Fax
eservice@gjglaw.com
Attorney for Plaintiff



Re: *Bootow v. Costco Wholesale Corporation*
Case No.: 30-2021-01228600-CIJ-PO-CJC

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STATE OF CALIFORNIA, COUNTY OF ORANGE

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NOTICE OF REMOVAL OF ACTION UNDER 28 U.S.C. § 1441(b) (DIVERSITY)

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Executed on March 30, 2022, at Irvine, California.

 Candice VanDeudekom



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Re: Bootow v. Costco Wholesale Corporation
Case No.: 30-2021-01228600-CIJ-PO-CJC

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Attorney for Plaintiff

